



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Product Research, Inc.

File: B-223439.2

Date: September 18, 1986

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### DIGEST

1. Solicitation provisions requiring that computer operators have experience on the same type of computers that are at the facility where the work will be performed is reasonable where the requirement is restricted to key personnel and the computer is highly sophisticated so that the government could not be assured of continuous smooth operation of the facility without such specific experience.

2. An agency is not required to equalize competition for a particular procurement by considering the competitive advantage accruing to offerors by virtue of incumbency or business acumen.

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### DECISION

Product Research, Inc. (PRI) protests that the specifications in request for proposals (RFP) No. N62269-86-0338, issued by the Department of the Navy for computer operation services at the Naval Air Development Center, Warminster, Pennsylvania, are unduly restrictive of competition. We deny the protest.

The RFP, a total small business set aside, contemplated award of a 1-year (plus 2 option years) cost-plus-fixed-fee contract to operate the Center's central computer system. The solicitation specified that a minimum of 35 people were required to provide various categories of computer services on a 24 hour, 7 day per week basis, and further required that 11 of the key personnel have experience on Control Data Corporation's (CDC) 700/800 series computer, the system in use at the Center.

Shortly after the RFP was issued, PRI contacted the Navy to request an extension of the closing date for receipt of proposals so that the company would have time to locate personnel having the kind of computer operation experience required by the solicitation. PRI also objected that the

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RFP's experience requirements were tailored to the qualifications of the personnel currently performing the computer operations at the Center, and that the RFP restriction against reimbursement for employee relocation costs was making it difficult to obtain qualified employees.

Following unsatisfactory discussions with the Navy, PRI filed a protest with our Office, asking that the RFP be modified to extend the closing date for receipt of proposals, and that either the experience requirements be eased to allow an offeror to propose people trainable within a short period of time, or the Navy make available the names of the current computer operators at the Center, along with their resumes, qualifications, and current wages. We dismissed PRI's protest as untimely under our Bid Protest Regulations because it appeared to have been filed after the RFP's closing date for the receipt of proposals. See 4 C.F.R. § 21.2(a)(1) (1986). Unbeknownst to us, however, the Navy had extended the closing date 30 days in response to PRI's request. PRI's protest, filed prior to the extended closing date, therefore was timely and will be considered.

In arguing that the minimum experience requirements are overly restrictive, PRI points out that a significant portion of the work described by the RFP involves routine matters such as keeping the equipment supplied with paper and tapes or keeping the equipment in operating condition through simple operator-level maintenance. PRI further notes that many of the required categories of computer operation services (e.g., data technician and tape librarian) are relatively low-paying and, according to PRI, can be performed readily by individuals trained at any computer operations center regardless of the equipment involved. It is PRI's view that, as a practical matter, only the personnel currently operating the Center's computers can qualify under the RFP since CDC computers used at the Center generally are found only at government-supported installations, and the computer operators at one installation will not readily relocate to work at another. PRI maintains that the experience requirements should be eliminated and proposed personnel be evaluated on their overall abilities.

The Navy states that the Center is the principal research and development facility for most naval aircraft systems; that the Center has computer equipment worth approximately \$100,000,000, including five CDC 700/800 mainframe computers worth \$3,000,000 each; and that it is essential that there be

qualified personnel to perform the computer operations to fulfill the Center's crucial role in naval aircraft research and development. The Navy determined that specific CDC 700/800 experience was necessary because of the high sophistication level of this equipment, and the Navy's desire that the contractor personnel understand how the equipment works. Particularly significant, in the Navy's view, is the uniqueness of the CDC operating system (i.e., the software that runs the equipment), which reportedly contains numerous details applicable only to this CDC system. The Navy also points out that the architecture of the CDC system is substantially different than that of other systems. The agency emphasizes that only the 11 most significant personnel (out of the 35 people called for by the RFP) are required to have experience on the CDC equipment and that no more than 2 years of such experience is required for any of these people.

In preparing for the procurement of supplies or services, the procuring agency must specify its needs and solicit offers in a manner designed to achieve full and open competition, so that all responsible sources are permitted to compete. A solicitation may include restrictive provisions only to the extent necessary to satisfy the needs of the agency or as otherwise authorized by law. Engine & Generator Rebuilders, 65 Comp. Gen. 191 (1986), 86-1 C.P.D. ¶ 27. Where solicitation provisions are challenged as restrictive, the initial burden is on the procuring agency to establish prima facie support for its belief that the challenged provisions are necessary to satisfy its needs. The adequacy of the agency's justification is ascertained through examining whether the agency's explanation is reasonable, that is, whether the explanation can withstand logical scrutiny. R. R. Mongeau Engineers, Inc., B-218356; B-218357, July 8, 1985, 85-2 C.P.D. ¶ 29. Once this prima facie support is established, the burden shifts to the protester to rebut the agency's position and show that the allegedly restrictive provisions are unreasonable. UNICO, Inc., B-217255, Aug. 7, 1985, 85-2 C.P.D. ¶ 138.

We find that the Navy has established prima facie support for its CDC computer operation experience requirements and that PRI has provided no evidence or argument showing that these requirements are unreasonable. Specifically, we see no reason why the Navy should not be permitted to require that key personnel of the operator of a sophisticated computer facility possess experience operating the same type of computer system in use at the facility. The absence of such experience, we believe, could give rise to reasonable concern, implicit in the Navy's position, that operational failure in the system could not be corrected immediately and

that vital data could be lost due to a lack of familiarity with the system. In view of the highly sophisticated nature of the CDC 700/800 system, we believe the Navy reasonably concluded that an employee's general experience and competence--the basis PRI urges should be used for evaluating personnel--would not assure that the employee could be trained on the CDC 700/800 system quickly enough to guarantee the continued smooth operation of the Center's computer operation; experience with one type of computer system does not necessarily equate to being able to operate a completely different, sophisticated system. We conclude that the requirement that 11 key employees possess CDC 700/800 system experience is legally unobjectionable.

As for PRI's request that information on the current computer personnel be made available, there is no legal requirement that such information be distributed or that the procuring agency take other steps to help assure that a given potential offeror will be able to obtain qualified employees. Any suggestion by PRI that other offerors, including the incumbent contractor, will have an improper competitive advantage by virtue of employment commitments they may obtained from current personnel at the Center is without merit. A competitive advantage is improper, and must be equalized by the government, only where the advantage results from preferential treatment of an offeror or other unfair action by the government. See Halifax Engineering, Inc., B-219178.2, Sept. 30, 1985, 85-2 C.P.D. ¶ 559. A competitive advantage accruing to an offeror due to its business acumen or its position as the incumbent need not be equalized in favor of the other offerors. See, e.g., Norfolk Ship Systems, Inc., B-219404, Sept. 19, 1985, 85-2 C.P.D. ¶ 309. There has been no preferential treatment here; other offerors apparently have approached current Center employees solely on their own initiative, unaided by the Navy. PRI was free to do the same based on its own assessment of any benefits to be gained.

The protest is denied.

*for* *Seymour Efron*  
Harry R. Van Cleve  
General Counsel